



# **COUNTYWIDE SERVICES AGENCY CONFLICT CRIMINAL DEFENDERS**

## **POLICIES & PROCEDURES FOR ASSIGNED COUNSEL INVESTIGATORS & OTHER ANCILLARY SERVICE PROVIDERS**

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# ATTORNEYS

## 1.0 Attorney Compensation

1.1 Effective June 26, 2005, the following Compensation Rates apply to all CCD cases assigned to indigent defense panel attorneys.

**Note:** Compensation Rates, except in capital cases are set by the Sacramento County Board of Supervisors. Compensation rates in capital cases are set by the Sacramento County Superior Courts. Current hourly compensation for offenses in each rate class can be found on the CCD website [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net) (revised 1/27/10)

Class	Cases Accepted On/ After 7/1/04		Cases Accepted On/After 6/26/05		Cases Accepted On/After 7/01/06		Cases Accepted On/After 11/01/06	
	In-Court	Out-of-Court	In-Court	Out-of-Court	In-Court	Out-of-Court	In-Court	Out-of-court
A1	\$95	\$75	\$95	\$75	\$95	\$75	\$150(1/8/07)	\$150(1/8/07)
A2	\$72.55	\$55.20	\$74.80	\$56.92	\$77.49	\$58.97	\$90.00	\$90.00
B	\$63.40	\$46.00	\$65.37	\$47.43	\$67.72	\$49.14	\$80.00	\$80.00
C	\$47.00	\$40.90	\$48.46	\$42.17	\$50.20	\$43.69	\$70.00	\$70.00
D	\$37.80	\$36.80	\$38.98	\$37.95	\$40.38	\$39.32	\$60.00	\$60.00

Offenses in each rate class can be found on the class/grade/compensation schedule available on the CCD website, [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net)

1.2 Attorneys shall be paid for their services according to the fee schedule in effect at the time the case was accepted.

1.3 Attorney billable activities are defined as follows:

**A. In-Court Time**

Services performed while Court is in session either in court or in chambers.

**B. Out-of Court Time**

All other time except that identified as non-billable

1.4 Non-billable activities are defined as follows:

- a. Invoice preparation
- b. Travel to and from home and/or office and place of business (See section 3.3 1L)
- c. In court Attorney of the Day activity (other than witness representation)
- d. Weddings/funerals/forfeitures
- e. Clerical & support staff activities (e.g., typing, photocopying, faxing, etc.)
- f. Messaging services (e.g., pick up/drop off discovery)
- g. Post sentencing services without prior approval other than restitution and preparation of the notice of appeal. (added 1/27/10)

1.5 Attorney hourly rate is determined by the most serious charged offense.

1.6 Attempted crimes are compensated at the hourly rate of the substantive offense.

1.7 Witness representation is compensated at the B rate (revised 1/27/10)

1.8 Attorneys will not be compensated for the preparation of multiple subpoenas for a single witness or agency once the witness or agent has appeared in Court. Attorneys **must** have the court recognize and order back all witnesses who appear pursuant to a subpoena.

1.9 Attorneys who are unable to make a scheduled court appearance may request another panel attorney to make the appearance for them. Under no circumstances can the

assigned attorney submit a claim for the appearance made by the attorney standing in for him/her.

- 1.10 Attorney compensation to redact discovery is \$15.00 per hour. The “benchmark” used for redaction is 150 pages per hour; 150 pages per hour is a benchmark only. Actual time must be claimed. Absent significant justification, the time claimed above the benchmark will not be compensated. (added 1/27/10)
- 1.11 Upon the request of the Attorney, Conflict Criminal Defenders will provide discovery redaction services. When Conflict Criminal Defenders provides these services, the attorney is responsible only for reviewing the redacted discovery to ensure that no prohibited material is included. The review of the redacted discovery is compensated at the hourly rate paid for the case. The “benchmark” used for the review of redacted discovery is up to .2 hours per 100 pages. Actual time must be claimed. Absent significant justification, time claimed above the benchmark will not be compensated. (added 1/27/10)

## 2.0 Attorney Billing Policies

### A. Paper Claims

- 2.1 Submit claims not eligible for webbill submission by mail or deliver to Conflict Criminal Defenders, 901 H Street, Suite 409, Sacramento, CA 95814. Att: Accounting. Paper claims submitted that are webbill eligible, will be returned.
- 2.2 Paper claims must be complete, typed, and submitted on the Conflict Criminal Defender Attorney Fee Claim Form, which can be found on the Conflict Criminal Defender web site ([www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net)) or picked up at the CCD office. Incomplete or illegible claims, or claims not submitted on the required form, will be returned unpaid.
- 2.3 Claims for services in adult and juvenile cases shall be submitted with all necessary supporting documentation.
- 2.4 Time spent on each activity shall be described in detail (i.e., reviewing pages 1–25 of 200 pages of discovery; conference with client at jail; preparation of 995 motion, etc.), listed separately on the activity sheet of the claim form, and billed in one-tenth (.1) hour increments. All client conferences must state where the conference took place.
- 2.5 Dates of activity must specify month, day and year.
- 2.6 Mathematical errors, incorrect rates or activity categories, will be automatically corrected without notice to attorney. (For exceptions see section 8.3)
- 2.7 If services *in an adult case* exceeds \$500 in a quarter, the services shall be billed within 5 working days of the end of the quarter. (September 30<sup>th</sup>, December 31<sup>st</sup>, March 31<sup>st</sup> and June 30<sup>th</sup>) If claims with services exceeding \$500 in a quarter are not submitted within 5 working days of the end of the quarter, any amounts over \$500 will not be paid. (revised 12/21/2007 – words in *italics* added)
- 2.8 (i) If services in a juvenile case exceed \$500 within 120 days from the date of assignment, the services must be billed within 5 working days from the last day of the 120 day period. If claims with services exceeding \$500 are not submitted within 5 working days from the last day of the 120 day period they will not be paid.
  - (ii) If services in a juvenile case do not exceed \$500 at any time within the fiscal year in which it was assigned, it must be billed within 5 working days of the end of the fiscal year in which it was assigned. (added 12/21/2007)
- 2.9 The statement of the nature of the case shall include sufficient information for the reviewer to determine the appropriateness of the amount claimed, and must include a brief factual description and current case status.

- 2.10 Should the class of the offense change prior to the completion of the case, separate claims shall be submitted for each offense class reflecting the dates of activities at the appropriate rates for each class. In the event of a plea to a lesser charge that charge won't be deemed to take effect until all representation has concluded.
- 2.11 All offenses charged must be specifically identified on the claim.
- 2.12 Expenses for investigator, expert, transcription, and other ancillary services, must be pre-authorized by Conflict Criminal Defenders and billed separately utilizing the Investigator/Expert/Other Claim Form. (See Sections 3.0 and 4.0 for detailed rules for Ancillary Services)
- 2.13 If, during the course of a hearing or trial an emergency need arises for an investigator and/or process server, verbal pre-authorization may be obtained from Conflict Criminal Defenders. (See Section 3.2 for detailed rules for emergency authorization)
- 2.14 Where an attorney represents the same client on multiple cases, single claims shall be submitted for each companion case billed. If a companion case is resolved in conjunction with the original case a separate claim(s) should not be submitted; the case number(s) of the companion case(s) must be listed on the attorney claim form.
- 2.15 When during the claim review process, pursuant to Exhibit C, non-public record case materials are requested the Conflict Criminal Defender Claim Review Policy for Co-defendant cases will be followed.
- 2.16 All services must be billed in the fiscal year in which they are provided. The fiscal year ends June 30<sup>th</sup>. Claims submitted for services performed in prior fiscal years will not be processed or paid.

#### B. Web Bill Claims

- 2.17 The WebBill System has been designed to simplify and expedite the submission of claims not exceeding \$1000. WebBill is a user-friendly County based system, which can be easily accessed from any computer with an internet connection
- 2.18 See WebBill Manual at: [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net) for details.

## INVESTIGATORS

### 3.0 Application and Criteria

Conflict Criminal Defenders maintains a list of investigators approved to render services in connection with Conflict Criminal Defender cases. In order to be placed and/or remain on the list, an investigator must:

- A. have and maintain at all times a current valid Private Investigator's license from the Department of Consumer Affairs;
- B. have and maintain at all times a current valid California Driver's license; and,
- C. provide positive references from three criminal defense attorneys with who the investigator has worked in the past 5 years.
- D. Have a cell phone or pager in working order with the current number on file with CCD.
- E. Have a current email address on file with CCD.
- F. Maintain mailing address on file with CCD.

Failure to maintain any of the above criteria will result in an immediate suspension from the list of approved investigators. A background check, which includes but is not limited to a state and local

summary criminal history check and a review of any disciplinary action by the Bureau of Security and Investigative Services, shall be conducted on all investigators prior to placement on the list. An investigator shall not be included on the Conflict Criminal Defender's list of investigators if s/he has been convicted of any crime that has or could have a clearly adverse effect on the investigator's ability to perform the duties and responsibilities as investigator and there are no mitigating circumstances. An investigator shall not be included on the list of investigators if it is determined that s/he has engaged in conduct or action that adversely affects the investigator's ability to perform his/her duties and responsibilities.

An investigator may also be disqualified from the list if it is determined that s/he falsified any material statement in order to qualify for the list of approved investigators.

Any investigator who remains inactive for a period of two years will be removed from the list of approved investigators.

### **3.1 Suspension and Removal**

An investigator shall be prohibited from rendering services in connection with Conflict Criminal Defender cases, and shall be suspended or removed from the approved list of investigators for good cause. Good cause is defined as any facts which, based on relevant circumstances, may be reasonably relied on in the exercise of reasonable discretion as the basis for removal and includes, but is not limited to the following:

- A. Conviction of any crime that has or could have a clearly adverse effect on the investigator's ability to perform the duties and responsibilities as investigator and there are no mitigating circumstances;
- B. Conduct or action by the investigator that adversely affects the investigator's ability to his or her duties and responsibilities;
- C. Failure to provide and/or failure to retain, maintain or provide CCD with such records as are necessary to ascertain time billed for services preformed, to review claims or to review an investigator's work;
- D. Failure to handle CCD cases with professionalism, competence and diligence;
- E. Refusal of the Sacramento County Sheriff Department to allow the investigator confidential access to inmates located in it's correctional facilities; and,
- F. Failure to comply with CCD rules and requirements.
- G. Investigators must at all times conduct themselves in an ethical, professional, civil, and courteous manner. Any investigator who engages in unethical conduct or who is rude, abusive, or discourteous to Conflict Criminal Defender staff, clients, client families, or court personnel, is subject to suspension and/or removal from the Conflict Criminal Defender Investigator Panel.(revised 9/2008)

An investigator subject to removal for good cause shall be given the opportunity to meet with CCD's Deputy Director to provide oral or written information to be consideration when determining good cause for suspension or removal. Live witnesses will not be allowed to present evidence at the meeting.

Upon finding good cause for a suspension or removal, CCD will notify the investigator, in writing, setting forth the grounds for the suspension or removal, five (5) calendar days prior to the effective date of the suspension or removal.

An investigator may request a review of the suspension or removal by CCD. The request for review must be in writing and directed to the CCD Director within fifteen (15) days of mailing of the notification of the suspension or removal. The request for review shall include, but not be limited to, a response to the stated grounds for removal and any additional information or documents that the investigator wishes to provide for review. **Failure to request a review within the specified time shall be deemed a waiver of the review process.**

The Director of CCD shall review any documents or information provided by the investigator. The Director may request additional information from the investigator or additional sources, as deemed necessary, to complete the review.

Upon completion of the review the Director may rescind, modify or uphold the suspension or removal as warranted by the findings. The Director shall notify the investigator of the review results in writing within ten (10) days of completion of the review.

### 3.2 Investigator Pre-Authorizations

All investigative work must be pre-authorized and conducted by an investigator on the CCD investigator list.

Attorneys are responsible for reviewing relevant discovery and developing a theory of the case and investigative plan. The pre-authorization request must include a declaration, prepared by the attorney that is case specific and details the tasks to be performed by the investigator. The declaration serves as the justification for funding as well as the written investigative request to the investigator. Requests with "boiler-plate" declarations will be returned.

Services that have not been authorized, even if the claim is within the dollar amount of the authorization will not be paid. Claims for amounts in excess of the authorized funds will not be paid.

The attorney and investigator are responsible for keeping track of time expended so that if additional investigation is necessary funds can be sought in a timely manner. (revised 3/2007)

Pre-authorization requests are processed each business day. In the case of an emergency and/or the need arises for immediate investigation, the attorney may contact CCD by telephone (874-6535) to obtain an emergency verbal authorization. **An emergency verbal authorization must be followed by a written authorization request submitted no later than three business days from the date the verbal authorization was given. Failure to submit the written request may result in a denial of future emergency authorizations.** It is the responsibility of the investigator to make sure that he/she is working under an approved pre-authorization.

### 3.3 Investigator Compensation

Rates of compensation for investigators are posted on the CCD website at [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net). Rates are based upon the charges filed and the complexity of the case. Cases are designated as A1, A2, B, C or D cases. A full list of the crimes and their classifications can be found at the CCD website.

1. Upon being retained by an attorney to work on a case the investigator shall be paid at the designated rate for the following assigned activities directly related to investigative tasks:
  - A. Review of pertinent discovery, police reports, documents, transcripts, as required to complete the assigned investigative tasks;
  - B. Meetings and discussions with attorney;
  - C. Meetings and discussions with defendant;
  - D. To locate and interview witnesses;
  - E. To view crime scene and take photographs and diagrams;
  - F. To perform background and record searches on defendant and potential witnesses;
  - G. To locate witnesses and serve subpoenas (see section 5.13 for subpoena service compensation rates);



- H. Coordination of witnesses for court appearances;
- I. Prepare reports of witness interviews;
- J. Testifying as a witness. CCD will **not** pay for standby time at the court waiting to testify, request that the court and/or the attorney put you on call by cell phone or pager;
- K. Transportation of witnesses with **prior** approval from CCD;
- L. Travel time to and from assigned investigative tasks. CCD will not pay for travel to and from the investigators home or office and the courthouse, main jail, Public Defender's Office, District Attorney's Office and CCD Office. Investigators with home offices will not be compensated for commute travel time to and from the attorney's office;
- M. Investigators whose place of business is outside of Sacramento County shall begin calculating compensation for time and mileage for work within the county upon reaching the county line.

**2. Investigators time will not be compensated for the following activities:**

- A. Clerical tasks including but not limited to: preparation of CCD claims, typing, faxing, photocopying, purchase of supplies; *delivery/pick up of documents or discovery (revised 3/19/09)*
- B. Legal tasks including but not limited to: preparation of declarations, medical releases, preparation of Powerpoint presentations, court orders and preparing, organizing and indexing of trial binders and case files.
- C. Investigative tasks were not requested by the attorney.

**3. Investigators will be reimbursed for the following expenses:**

Investigators will be reimbursed for expenses related to the investigation of the case with original receipts including but not limited to:

- A. When the Public Defender's Clothes closet does **not** have the needed size, **with prior authorization**, defendant clothing expense for trial is reimbursable up to a maximum of \$75.00 upon presentation of original receipts. All clothing must be returned to CCD office for cleaning;
- B. Parking is reimbursable for all locations other than home and/or office, Sacramento County Courthouse, mail jail, Public Defender's Office, District Attorney's Office and CCD;
- C. DMV, social security, and other record check expenses. Investigators will use the services of CCD staff to run DMV searches. The investigator shall complete the DMV search request form (located on our website [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net) under downloadable forms) and fax it to CCD. Once the search is completed the investigator can pick up the results at the CCD office upon signing the necessary forms;
- D. In-house photocopy expense is reimbursed at actual cost up to \$.10 per copy. Absent unusual circumstances, photocopy jobs exceeding 500 copies must be taken to a photocopy shop for duplication. Reimbursement will be made at actual cost not to exceed \$ .10 per copy;
- E. Agency photocopy fees (i.e., hospitals, courts, etc.);
- F. Travel expenses are reimbursable in accordance with Sacramento County Travel Policy.

**4. Normal overhead costs of maintaining an office are **not allowable expenses** for reimbursement including:**

- A. Telephone charges inside 916 area code and collect calls from in or out of custody clients.;
- B. Clerical and messenger services;
- C. Postage;



- D. Fax charges; and,
- E. Office supplies, etc.

Mileage is reimbursed at the county mileage rate in effect on the day mileage was performed. Subject to 3.3 1L, compensable mileage is limited to the following locations:

- A. RCCC;
- B. Crime scene;
- C. State/federal institution;
- D. Witness interviews;
- E. Witness pickup and delivery to court (with prior CCD approval);
- F. Other miscellaneous mileage (e.g., outside agencies, institutions, post office, hospitals, etc.); and,
- G. Investigator travel to attorney's office with the exception of investigators who have an office in the home.

### **3.4 INVESTIGATOR BILLING POLICIES**

1. Claims must be typed or if handwritten be legible and submitted on the current Investigator/Expert/Other Claim Form. Claims that are illegible or not submitted on the required form will be returned unpaid.
2. Claims must be complete and be signed by both the investigator and the assigned attorney. The attorney declaration originally submitted as justification for the pre-authorization must be submitted with the claim.
3. Only one bill per authorization may be submitted. Interim billing against an authorization is **not** allowed. Authorizations are valid for one year from the date of authorization. Any outstanding authorization that has been in effect for one year must be billed out and a new authorization obtained;
4. In on-going investigation, claims for all prior investigative services must be submitted prior to, or simultaneously with, requests for additional funding. Only one outstanding preauthorization is allowed per vendor.
5. Amounts exceeding the approved request will not be paid.
6. Time spent on each activity shall be described in detail (i.e. reviewing pages 1 – 25, 26 – 74 pages of discovery, conference with client at jail, witness interview, etc.). Each activity shall be listed separately on the activity sheet of the claim form and billed in one-tenth (.1) hour increments. All interviews must identify each witness by name, initials or a number and state where the interview took place by listing the address or area and zip code. Mathematical errors and incorrect rates will automatically be corrected without notice to the service provider.
7. Claims shall be submitted no more than 90 days following the completion of case. Absent unusual circumstances, claims submitted later than 90 days will be returned unpaid. It is the responsibility of the investigator to track the case progress and its completion of judgment and sentencing.
8. Should the class of the offense charged change prior to the completion of the case; a new request for funds must be submitted identifying the change of the offense, the date of the change, and the new rate, if any.
9. Claims should be mailed or delivered to Conflict Criminal Defenders Office, 901 H Street, Suite 409, Sacramento, CA 95814.

## Experts, Vendors, & Other Ancillary Service Providers

### 4.0 Experts, Vendors and other Ancillary Service Providers

- 4.1 All services to be provided by experts, legal researchers, transcribers and others must be pre-authorized by Conflict Criminal Defenders via submission of the Investigator/Expert/Other Pre-authorization Form.
- 4.2 The attorney's declaration shall accompany the request for funds and shall contain sufficient detail necessary to properly evaluate the request. The specific service(s) the vendor is to provide must be clearly stated as well as the relevance to the theory of the defense.
- 4.3 Approved ancillary service requests are available for pickup at the CCD Adult Appointment Coordinator's office for adult defendants and at CCD's juvenile hall office for juvenile defendants. Approved pre-authorizations will be returned by mail if a stamped self-addressed envelope is attached when the preauthorization form is submitted.
- 4.4 Claims submitted for payment shall be complete, legible and signed by both the vendor and the assigned attorney.
- 4.5 The declaration supporting the request for funds shall be attached to the claim upon presentation for payment.
- 4.6 An itemized list of the services provided, dates of service and hours worked shall accompany the claim.
- 4.7 Interim billings against an authorization **are not** allowed. Only one claim may be billed against a single funding authorization.
- 4.8 For on-going services, attorneys shall ensure that claims for all prior services by the vendor are submitted prior to, or simultaneously with, requests for additional funding.
- 4.9 Mathematical errors or incorrect rates will automatically be corrected without notice to service provider.
- 4.10 Attorney will ensure that service providers submit claims for payment no later than 90 days following completion of the service.
- 4.11 Claims exceeding the amount authorized, or services provided prior to obtaining the funding authorization, will be paid only up to the amount authorized from the date of the authorization.
- 4.12 Vendors & Experts are paid an hourly rate for actual time spent working on the case. Travel time or "portal to portal" time is not paid. (Added 1/7/09)

## EXPENSES

### 5.0 Expense Reimbursement

- 5.1 Normal overhead costs are not considered allowable expenses for reimbursement. These include telephone charges inside 916 area code, clerical and messenger services, postage, fax, etc. Collect calls from in or out of custody clients will not be reimbursed. Clients should be instructed in the use of the CCD jail phone voice mail system.
- 5.2 Investigator services, expert services, psychiatric & psychological evaluations and other ancillary service costs are reimbursed as stated in Items 3.0 and 4.0.
- 5.3 The cost of purchasing audio/video tapes, film, and film processing is reimbursable upon presentation of original receipts.

- 5.4 When the Public Defender's Clothes closet does **not** have the needed size, **with prior authorization**, defendant clothing expense for trial is reimbursable up to a maximum of \$75.00 upon presentation of original receipts. All clothing must be returned to CCD office for cleaning.
- 5.5 Approved Exhibit expense is reimbursable with original receipts.
- 5.6 Pre-approved paralegal services are reimbursable at the rate of \$15.00 per hour upon presentation of original receipts. **Pre-authorization is required.**
- 5.7 Mileage is reimbursed at the county mileage rate in effect on the day mileage was claimed.
- a. Compensable mileage is limited to the following locations:
- i. RCCC
  - ii. Crime scene
  - iii. State/federal institution
  - iv. Witness interviews/pickup
  - v. other misc. mileage (e.g., outside agencies, institutions, post office, hospitals, etc.)
  - vi. Investigator travel to attorney's office
  - vii. Attorneys & Investigators representing juveniles charged as adults will be reimbursed for mileage to and from juvenile hall.
- 5.8 Parking expense is reimbursable for all locations other than home, office, and as defined in section 3.3 3b. Original receipts are required.
- 5.9 DMV, social security, and other record check expenses are reimbursable with original receipts.
- 5.10 In-house photocopy expense is reimbursed at actual cost up to \$.10 per copy. Absent unusual circumstances, photocopy jobs exceeding 500 copies shall be taken to a photocopy shop for duplication. Reimbursement will be made at actual cost not to exceed \$ .10 per copy upon presentation of original receipt. Copies made at the courthouse on the coin operated machines will be reimbursed up to \$ .15 cents per copy.
- 5.11 Agency photocopy fees (i.e., hospitals, courts, etc.) will be reimbursed with original receipts.
- 5.12 Shipping/Federal Express expense will be reimbursed with original receipts. Justification must be provided for the use of overnight and two-day services such as Federal Express.
- 5.13 Process service will be reimbursed at actual cost up to a maximum of \$30.00 per service. Mileage and time will not be reimbursed. Service of multiple subpoenas at one location will be treated as a single service.
- 5.14 Long distance telephone charges outside the 916 area code will be reimbursed. A copy of the telephone bill with the case-related calls highlighted must be submitted as supporting documentation.
- 5.15 With **prior approval** transcription expense is allowable at actual cost up to a maximum of \$3.50 per page. With prior approval transfer of videotapes to audio for the purpose of transcription only shall be reimbursed at actual cost not to exceed \$15.00 per hour. Original receipts are required.
- 5.16 With prior authorization, out-of-court translation expense is allowable at actual cost up to a maximum of \$ .18 per word. Original receipts are required.
- 5.17 Travel expenses are reimbursable in accordance with Sacramento County Travel Policy (See Section 7.0). If the destination requires an overnight stay, or other costs are involved, prior authorization is required.
- 5.18 Civilian witness fees are only reimbursed for those witnesses who are employed and their employer is not reimbursing them for lost wages. Up to \$18.00 per day plus mileage and reasonable expenses can be claimed on the Witness Fee Claim Form. Original receipts are required for reimbursement.
- 5.19 Office supplies (file folders, legal pads, binders, index cards, copy paper, etc.) are not considered allowable expenses for reimbursement.

- 5.20 Monies, books, personal items, and other supplies provided to the defendant are not considered allowable expenses for reimbursement.
- 5.21 Use of an outside vendor is prohibited and not reimburseable for any service that is provided by CCD. Please see the CCD website ([www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net)) for a complete list of services that are provided by CCD. (Added 1/7/09)

## 987.9 FUNDS

### 6.0 Request For Funds – Explanation of the Process

#### 6.1 Overview

Judge Tom Cecil has been designated by Presiding Judge as the judge responsible for all requests for ancillary funding in death cases (987.9 PC funding). The memo below is provided by Judge Cecil.

#### 6.2 Memo from Judge Cecil

"The purpose of this memo is to outline the procedures that I will use in reviewing such requests. It is my hope that this explanation will avoid confusion and delay, allowing me to act on our requests in a timely fashion.

I will **NOT** set your request for a hearing unless I am inclined to deny the request, in whole or in part. In other words, a final denial will not occur without giving you the benefit of expressing your position in camera, on the record. Such hearings will take place in whatever court I am working in (presently Department 61) at a time and on a date to be coordinated with my clerk, Bob Rouse.

There may be situations when a simple phone call to you will resolve an issue or question that I may have. I will attempt to resolve as many issues as possible without disrupting your schedule to participate in a reported hearing.

#### **1. Format of Requests**

Your first request for funding that comes to me needs to contain a brief statement of the facts of the case, the status of the case and the names of all counsel involved in the case. Subsequent requests for funding need not reiterate this information, but must include updated information if the circumstances have changed. I will maintain a secure file on each case – if I need to refresh my memory on the facts of the matter, I can simply look at the initial material (and updates) that you provided.

- A. All requests for funds must include a declaration from counsel that discloses the following information:
- \* The type of service being requested (investigator, lab work, travel, etc.)
  - \* The name of the service provider, and if applicable, a vita or resume of the provider
  - \* A detailed description of the services to be provided and the relevance of such work to the defense theory.
  - \* The number of hours estimated to complete the work, the hourly rate and a general estimate of when the work will be completed. Note that flat fees will not be approved. You also need to include the rate paid to this expert in the past.

- \* Requests for travel and/or per diem funds. (Remember that when using out of state providers the attorney must provide justification for hiring such providers, including attempts to secure in state providers).

## **2. Requests for Supplemental Funds**

If your request supplements funding that has already been approved and expended (or about to be expended), your request should include the following information:

- \* A copy of any earlier request for funding for the service/provider, to include the earlier declaration submitted in support of such funding.
- \* A detailed description of the services provided pursuant to the earlier approved funding and an explanation as to why promised services have not been completed (if that is the case)
- \* A detailed description of the new/additional services to be provided and the relevance of such work to the defense theory.”  
(End of Memo)

### **6.3 When 987.9 No Longer Applies**

- a. In cases where the death penalty is no longer a possibility (e.g., DA's Office affirmatively states they are not seeking the death penalty, the special circumstances are dismissed or found to be not true, etc.), PC 987.9 is not applicable after the date of such determination.
- b. In those cases, the attorney shall submit all outstanding claims by service providers within 90 days following the date of determination.
- c. If the case requires additional investigative or other ancillary services, new funding requests must be pre-authorized by Conflict Criminal Defenders. In addition to the standard information required for pre-authorization requests (see Items 4.0 and 6.0), the attorney shall include in the new request the total amount of funds previously authorized and expended by all providers of services for which additional funds are being requested and submit a declaration that provides justification for such request.

<b>TRAVEL</b>
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## **7.0 Travel**

### **7.1 Travel Advances**

- a. Up to 90% of estimated mileage, lodging and meal expenses may be advanced. Requests for advances shall be made to Conflict Criminal Defenders by submission of a completed Investigator/Expert/Other Pre-authorization form and attached declaration stating the specific purpose of the travel, the relevancy to the theory of the defense, and the anticipated travel costs.
- b. Generally, travel advances can be provided within five business days following authorization by Conflict Criminal Defenders.
- c. Travel advances will be issued in the name of the traveler only. If an attorney and investigator (or other service provider) are traveling together, separate requests must be submitted for each traveler.

- d. Advances shall not be made for amounts less than one hundred dollars (\$100.00) and will not be made if a previous advance is unsettled.
- e. After pre-approval, all air travel should be made through Conflict Criminal Defenders. Contact Jennifer Elizalde at 874-8330.
- f. Rental cars can be reserved but must be paid for by traveler and can be reimbursed upon presentation of original receipt.
- g. Hotel arrangements must be made and paid for by the traveler and are reimbursable pursuant to Section 7.2 a.

## 7.2 Travel Reimbursement

- a. Reimbursement for the cost of lodging is limited to the actual cost incurred up to \$79.00 per day maximum. Whenever offered, government rates shall be requested. Original receipts are required for reimbursement of all lodging expense. Copies of canceled checks or credit card statements do not qualify as original receipts. Upon request verification letters will be provided to secure government rates.
- b. Reimbursement for meals shall be made only when travel extends for a minimum of six hours during the normal working day. All travelers must report the beginning and ending dates and time of travel in order to determine the appropriate meal allotment. Meals supplied by common carriers or included in hotel rates will not be reimbursed.
- c. Upon presentation of original cash register receipts, (credit card summary receipts are not acceptable) travelers will be reimbursed actual meal cost (excluding alcoholic beverages) up to the following amounts:
 

Breakfast	\$10.00
Lunch	\$12.00
Dinner	\$26.00
- d. If attorney and investigator (or other service provider) are traveling together, they must request separate receipts for all expenses. Meal receipts must identify the date and type (breakfast, lunch, dinner) of the meal.
- e. Reimbursement **will not** be made for the meal expenses of guests of the traveler, such as witnesses, experts, etc.
- f. If Conflict Criminal Defenders is unable to arrange transportation expenses, transportation expenses approved by Conflict Criminal Defenders will be reimbursed upon presentation of original receipts. Copies of canceled checks or credit card statements do not qualify as original receipts.
- g. Travelers may choose to use a private vehicle. Mileage will be reimbursed at the county's mileage rate in effect on that day, but in no case will reimbursement for mileage exceed the cost of air travel, should the provider choose to drive.
- h. Absent unusual circumstances, travelers who cancel airline flights will be required to pay any cancellation penalties. Exceptions include family death, serious illness, and court changes in trial schedule.
- i. Rental car expense will be reimbursed only when multiple business meetings require travel between points that make use of public conveyances impractical, and pre-approval has been obtained from Conflict Criminal Defenders. Original receipts required.
- j. Up to \$5.00 per 24 hours of travel will be allowed, without receipts, to cover baggage handling, tips, and incidental expenses.
- k. The following additional expenses are reimbursable at actual cost upon presentation of original receipts:
  - i. Taxicab, airport transportation, or bus fare
  - ii. Car storage fees/long term parking

- I. Reimbursement **will not** be made for such extraneous charges such as video movies, laundry service, valet parking, personal toiletries, alcohol, etc.

### 7.3 Travel Reconciliation

- a. Within 30 days from the date of travel, a complete reconciliation of travel funds advanced and expended, accompanied by original supporting documentation, must be submitted to Conflict Criminal Defenders.
- b. All expenses must be listed in detail and in chronological order on the final reconciliation. Original receipts must be attached.
- c. Any unspent portion of the advance must be refunded by check made payable to County of Sacramento. Expenses requiring additional reimbursement shall be submitted by use of the appropriate claim form (either Investigator/Expert/Other, or Appointed Attorney Claim Form).

## CLAIM REVIEW PROCEDURES

### 8.0 **Claim Review Procedures**

- 8.1 Claims are submitted to Conflict Criminal Defenders for review. Conflict Criminal Defenders may request additional materials pursuant to the attorney agreement. The review shall, at a minimum, take into consideration and include the following factors:
  - a. Verification of mathematical accuracy.
  - b. Verification that the billing is for the proper class of case and the time claimed is properly allocated by activity.
  - c. Verification that the case information provided is accurate and complete.
  - d. The activity claimed is an allowable activity.
  - e. Evaluation of service and time spent by the attorney or investigator based on:
    - i. The difficulty of the defense;
    - ii. Whether the case involved factual or legal complexities, novel or unsettled law, or conceptual intricacies;
    - iv. The degree of professional ability, skill, and experience called for and exercised in the performance of the services.
    - v. The quality of the work is taken into consideration in determining what is reasonable compensation. If the work is of high quality, the hours claimed may be appropriate. If the work is of fair or poor quality, the hours claimed may be reduced.
    - vi. The amount of time a reasonably competent attorney of the same grade would need to perform the same or similar service;
- 8.2 If the Executive Director or Deputy Director determines the claim submitted is appropriate for the services preformed, he/she shall forward the claim directly to the County for payment. If the Court so requests, claims may be reviewed by a judicial officer after review by Conflict Criminal Defenders and before submission to the County for payment.



- 8.3 If the Executive Director or Deputy Director determines the claim submitted is incorrect for the reasons stated in 8.1 a or b, c, or d appropriate adjustments to the claim will be made and the adjusted claim will be forwarded to the County for payment. There will be no notice to the Attorney or other service provider. When claim has been adjusted by Conflict Criminal Defenders for reason(s) other than those stated in 8.1 a, b, c, or d, the service provider shall be notified in writing of the amount of the reduction and the reason(s) therefore. The Attorney or other service provider shall have the opportunity to discuss the reduction with Conflict Criminal Defenders.
- 8.4 An Attorney or other service provider whose claim has been reduced by Conflict Criminal Defenders may appeal the action by filing a written notice of appeal to Conflict Criminal Defenders as described below:
- a. The appeal must be in writing and contain detailed information regarding the nature and grounds for the appeal.
  - b. The appeal must be sent to Conflict Criminal Defenders within fifteen (15) calendar days of the date the service provider was notified of the reason;
  - c. The Executive Director or Deputy Director shall review the appeal of the Attorney or other service provider and if based upon the information provided by the attorney or other service provider, he/she determines there is cause for full or partial restoration, such amount will be restored. The Attorney or other service provider will be noticed of the Executive or Deputy Director's decision within fifteen (15) calendar days following receipt of the appeal;
  - d. The attorney may appeal the decision of the Executive Director or Deputy Director to the Indigent Defense Advisory Committee. (IDAC)
    - i. The appeal must be in writing contain detailed information regarding the nature and grounds for the appeal, and be submitted within fifteen (15) calendar days of the date the attorney was notified of the decision;
    - ii. The IDAC shall meet and decide the appeal within thirty calendar days of the date it was notified thereof. Both the service provider and the Executive Director shall be notified thereof. Both the service provider and the Executive Director shall be notified in writing of the Committee's decision within fifteen (15) calendar days of the decision being made. The decision of the IDAC shall be final and binding upon the service provider and Conflict Criminal Defenders.
    - iii. All communications, deliberations and records of IDAC's appellate activities shall be confidential.

## ATTORNEY CASE ASSIGNMENT RESTRICTIONS

### **9.0 Case Assignment Restrictions**

- 9.1 An attorney shall be prohibited from receiving assignment to Conflict Criminal Defender cases if any of the following occur:
- a. The attorney has been suspended, disbarred, or has resigned from the State Bar.
  - b. Cancellation or lapse of Errors and Omissions liability insurance.
  - c. As a result of a recommendation made by the Indigent Defense Panel Committee, Peer Review Sub-Committee or Classification Sub-Committee; (See Indigent Defense Panel Peer Review Rules and Procedures at [www.ppaccd.saccounty.net](http://www.ppaccd.saccounty.net) )
  - d. Resignation from the Indigent Defense Panel;

- 9.2 Regardless of an Attorney's status on the Indigent Defense Panel, the Executive Director may refuse to assign Conflict Criminal Defender cases to an Attorney, either temporarily, or permanently, for good cause. Good cause includes, but is not limited to, the following:
- a. Conviction of a criminal charge involving moral turpitude;
  - b. Falsification of any material statement made to qualify for the Indigent Defense Panel or made in connection with or and/or in any report, authorization requests, and/or claim submitted to Conflict Criminal Defenders by the Attorney.
  - c. Failure to maintain eligibility and qualifications under these rules;
  - d. Failure to comply with the State Bar Act or the Rules of Professional Conduct;
  - e. Failure to comply with Conflict Criminal Defenders rules and procedures and Attorney Agreement for Legal Services. (Exhibit C)
  - f. Conduct that the Court deems inappropriate;
  - g. Failure to personally represent the client at substantive court proceedings;
  - h. Referring Conflict Criminal Defender cases to other attorneys, or subcontracting to other attorneys.
  - i. Maintaining a caseload that interferes with the rendering of quality representation or leads to the breach of ethical obligations to clients.
  - j. Failure to represent clients with professionalism, competence and diligence.
  - k. Failure to sign and return the State Bar of California Attorney Guidelines of Civility & Professionalism Attorney Pledge. (effective 01/01/2008)
- 9.3 Prior to a decision to temporarily or permanently restrict the type of case, and/or suspend case assignments to an active Indigent Defense Panel member attorney, other than upon the recommendation of the Indigent Defense Panel Committee, Peer Review or Classification Subcommittee, Conflict Criminal Defenders shall provide written notification to the attorney of the specific problem and allow a reasonable time for the attorney to respond in person or in writing.
- 9.4 If after consideration of the attorney's response Conflict Criminal Defenders temporarily or permanently restricts or suspends case assignments, the appellate rules in 8.4 apply.

## ATTORNEY SERVICES REQUIRING PRE-AUTHORIZATION

### 10.0 Pre-authorization

- 10.1 Pre-authorization is needed prior to any work being undertaken for the following services. Without prior authorization, claims submitted for these services will not be paid.
- i. Research, drafting, etc. of interlocutory writs.
  - ii. Research, drafting, etc. of motions for new trial.
  - iii. Research, drafting, etc. of motions to withdraw a plea.
  - iv. Post-trial jury investigation.